

NTSB Order No. EA-4098

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 17th day of February, 1994

Docket SE-12445

unairworthy aircraft. For the reasons that follow we grant the Administrator's appeal in part, and reverse the initial decision.

The Administrator's amended order of suspension charged respondent with violating 14 C.F.R. §§ 91.7(a) and (b), 91.9(a), and 91.13(a),<sup>2</sup> based on the following factual allegations:

2. On September 29, 1991, you acted as pilot-in-command of civil aircraft N158Y, a Davis D1K, owned by you, on a passenger-carrying, glider-towing flight that terminated in an accident near the Chester Airport in Chester, Connecticut.

3. Inspection of civil aircraft N158Y revealed that automotive gasoline was present in the fuel system at the time of the accident.<sup>3</sup>

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<sup>2</sup> **§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

**§ 91.9 Civil aircraft flight manual, markings, and placard requirements.**

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

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**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup> The Administrator does not contend that respondent's use of automotive fuel was a cause of the accident.

4. On May 13, 1964, a Supplemental Type Certificate (STC) was approved for N158Y providing for the installation of Continental C-125-2 engine and McCauley 1A170DM propeller.

5. The Operating Limitations of said STC requires the use of 80/87 minimum octane aviation gasoline in N158Y.

6. No other STC exists which provides for the use of automobile gasoline in N158Y.

7. The presence of automobile gasoline in N158Y rendered the aircraft unairworthy.

8. You operated N158Y at a time when it was not in an airworthy condition.

9. Your operation of an aircraft in the manner and under the circumstances described above was careless so as to endanger the life and property of others.

Respondent, who appeared pro se at the hearing,<sup>4</sup> did not dispute that the aircraft was fueled with automotive gasoline at the time of the accident, nor did he deny that the operating limitations of the 1964 STC pertaining to the Continental C-125-2 engine installed on his aircraft specified the use of 80/87 minimum octane aviation gasoline. However, he contended that his use of automobile gasoline was authorized by a subsequent STC, issued to the Experimental Aircraft Association (EAA) Aviation Foundation in 1983, and amended in 1984 and 1988.<sup>5</sup> (See Exhibit R-1.) That STC permits the use of unleaded automotive gasoline in certain specified engine models, including the C-125-2

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<sup>4</sup> Respondent did not file a reply to the Administrator's appeal brief.

<sup>5</sup> Respondent also testified that, for the engine installed in his aircraft, automobile gasoline produces better engine performance and less engine maintenance than aviation fuel. (Tr. 36-8.)

installed on respondent's aircraft, but also provides, under the heading "Limitations and Conditions," that "[s]pecific approval must be obtained for each model aircraft to ensure compatibility with its fuel system."

The FAA inspector in this case testified that his review of the aircraft records indicated that respondent's aircraft was not covered by the STC permitting use of automobile gasoline because the specific approval required by the STC had not been obtained.

The STC could have been incorporated into the aircraft records, he explained, by making a maintenance entry and submitting appropriate forms, including FAA Form 337.<sup>6</sup> (Tr. 13-4, 23-4.) Accordingly, at the time of this incident respondent's aircraft was still governed by its original type certificate, as modified only by the 1964 STC, which required the use of 80/87 aviation gasoline. Therefore, respondent's use of automobile gasoline rendered the aircraft unairworthy because it did not conform to its type certificate, as modified.<sup>7</sup> (Tr. 13-9.)

We agree with the Administrator that the law judge, having

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<sup>6</sup> In addition, the inspector testified, some aircraft might require structural modification, or additional placarding, in connection with implementing the STC which allowed use of automobile gasoline in their engines. (Tr. 25.)

<sup>7</sup> Before an aircraft may be considered airworthy, it "(1) must conform to its type certificate, if and as that certificate has been modified by supplemental type certificates and by Airworthiness Directives; and (2) must be in condition for safe operation." Administrator v. Nielsen, NTSB Order No. EA-3755 at 4 (1992), citing Administrator v. Doppes 5 NTSB 50, 52 n. 6 (1985). The Administrator's position in this case is based only on the first prong of this test, i.e., that respondent's aircraft did not conform to its type certificate. (Tr. 49.)

concluded that respondent "did violate the regulations," was not justified in dismissing the order of suspension in its entirety simply because he deemed the violations to be "technical."

(Tr. 62.) However, we disagree with the Administrator's assertion that he succeeded in establishing all four of the violations alleged in the complaint. In our judgment, the record in this case can only support violations of sections 91.7(a) (operation of an unairworthy aircraft) and 91.9(a) (failure to comply with the aircraft's operating limitations).

Although the Administrator asserts in his brief that respondent's operation of his aircraft was inherently dangerous, and therefore in violation of sections 91.7(b) (failure to determine whether the aircraft was in a condition for safe flight) and 91.13(a) (careless or reckless operation of an aircraft), we see no evidence in this record to indicate that respondent's use of automobile gasoline rendered his operation less safe than if he had used the prescribed aviation fuel. Indeed, in view of the Administrator's failure to introduce any evidence -- or even to assert -- that respondent's aircraft would not have received the requisite approval had it been requested, we are inclined to agree with the law judge that the violations established herein are largely technical.

In light of our dismissal of two of the four violations charged in the Administrator's complaint, and the technical nature of the two violations found established,<sup>8</sup> we believe that

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<sup>8</sup> The Administrator acknowledges in his brief that the law

some modification in the 15-day suspension requested by the Administrator is required. We have determined that a 5-day suspension of respondent's pilot certificate is appropriate under the circumstances of this case.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted in part;
2. The initial decision is reversed;
3. The Administrator's complaint is affirmed insofar as it alleges violations of 14 C.F.R. 91.7(a) and 91.9(a); and
4. The 5-day suspension of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.<sup>9</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

(..continued)  
judge's perception of the violations in this case as merely technical, while not warranting dismissal of the complaint, could properly be considered in mitigation of sanction.

<sup>9</sup> For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).